

AG Contract No KR03-1760TRN
ADOT ECS File No. JPA 03-120
Project No.: TEA B19-A(002)A
Section: Nogales B-19, Sidewalks
TRACS No.: H6051 01C
Budget Source Item No.: 75305

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF NOGALES

THIS AGREEMENT is entered into April 19, 2004 pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF NOGALES, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, the twelve eligible transportation enhancements provision of safety and educational activities for pedestrians and bicyclists.
4. The City has selected such project within the boundary of the City; the survey of the project has been completed; and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.
5. The State and the City wish to partner in the construction of sidewalk with pedestrian lighting and maintenance of landscaping, on B-19 in Nogales from milepost 1.72 to milepost 3.08, hereinafter referred to as the "Project". The parties agree that the State will design, construct, and the City will be responsible for sidewalk maintenance and provide electrical and water services for the landscaping and irrigation.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

NO. 26780
Filed with the Secretary of State
Date Filed: 04/19/04

Janice K. Brewer
Secretary of State

By: Vincent Haernewald

The estimated Project costs are as follow:

Construction TRACS No.: H6051 01C	
Estimated Project Cost	\$ 865,000.00
Federal Aid Funds @ 94.3%	\$ 815,695.00
Estimated State Funds @ 5.7%	\$ 49,305.00
<i>*Total Estimated Cost of the Project</i>	<u>\$ 865,000.00</u>

II. SCOPE OF WORK

1. The State will:

a. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

b. If such Project is approved for construction by FHWA and the funds are available for construction of the Project, the City will and does hereby designate the State as authorized agent for the City, and with the aid and consent of the City and the FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the City, enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project, such Project to be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, of the Arizona Department of Transportation. The State will enter into a Project Agreement with FHWA on behalf of the City covering the work embraced in said construction contract and will request the authorized federal funds available, including construction engineering and administration costs.

c. Prepare plans, specifications and other such documents for the Project. Submit them to the City for concurrence. After the City concurs with the plans, the Project will be constructed by the State, using State and Federal Funds estimated at \$865,000.00.

d. Be responsible for any contractor claims for extra compensation due to delays or for what ever reason attributed to the State.

e. Provide low-water plants indigenous to the region for the landscaping of the Project.

f. Not be obligated to maintain said project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this agreement.

2. The City will:

a. Furnish all water for landscape installation during the construction phase, a point of connection (POC) for the irrigation system, and all water thereafter necessary to properly maintain the landscape, all at the City's expense. The City will also provide an electrical POC to the Project area for the purpose of providing power for the pedestrian lighting.

b. Maintain the landscaping in accordance with accepted horticultural practices, keeping all areas free of weeds, undesirable grasses and litter. Maintain all components of the irrigation system, be responsible for irrigation water, pruning and replanting as required to maintain the landscaping as it was designed including the irrigation system, as established at the completion of the Project.

c. Upon completion, approve and accept the Project, provide for at its own cost and as an annual item in its budget, perpetual and proper maintenance for landscaping and the pedestrian sidewalk. Provide electrical power for the landscaping, irrigation system, and sidewalk, including but not limited to; sweeping and repair and/or replacement of concrete slabs as needed for safe access to pedestrian facilities all at City expense.

d. Be responsible to minimize traffic congestion and interference with through traffic while performing maintenance work and traffic control will meet the requirements of the Arizona Department of Transportation's "Uniform Traffic Control Manual".

III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said Project and reimbursements; provided, however, that this agreement, except any provisions for maintenance, water, electrical and landscaping which shall be perpetual, may be cancelled at any time prior to the award of a Project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event the City terminates this agreement, the State shall in no way be obligated to maintain said Project.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

6. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State and City under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State and City at the end of the period for which the funds are available. No liability shall accrue to the State and City in the event this provision is exercised, and the State and City shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

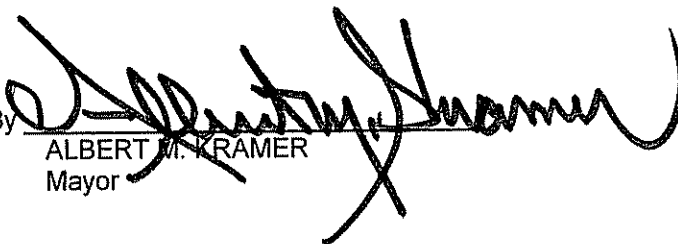
Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

City of Nogales
City Manager
777 N. Grand Avenue
Nogales, AZ 85621


9. In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF NOGALES

By 
ALBERT M. KRAMER
Mayor

STATE OF ARIZONA
Department of Transportation

By 
SUSAN TELLEZ
Contract Administrator

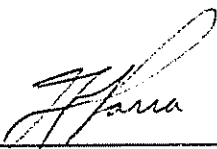
ATTEST

By 
LETICIA ROBINSON
City Clerk

APPROVAL OF THE CITY OF NOGALES ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF NOGALES, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this _____ day of _____, 2004.



City Attorney

**AN ORDER OF THE MAYOR AND COUNCIL OF THE
CITY OF NOGALES, ARIZONA AUTHORIZING THE
MAYOR TO ENTER INTO AN
INTERGOVERNMENTAL AGREEMENT WITH
ARIZONA DEPARTMENT OF TRANSPORTATION
FOR THE GRAND AVENUE ENHANCEMENT
PROJECT, DOE STREET TO BAFFERT DRIVE,
NOGALES B-19, SIDEWALKS**

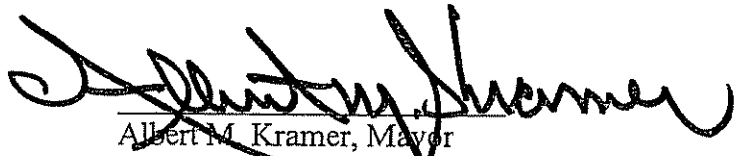
WHEREAS, the Grand Avenue Enhancement Project, Doe Street to Baffert Drive, Nogales B-19, Sidewalks, is intended to service this highly used pedestrian and transit corridor; and

WHEREAS, the intergovernmental agreement with Arizona Department of Transportation (JPA 03-120) for maintenance of landscaping, irrigation, lighting and sidewalks is in the best interest and welfare of the City of Nogales.

NOW, THEREFORE, BE IT ORDERED by the Mayor and Council of the City of Nogales that:

1. That the intergovernmental agreement with Arizona Department of Transportation, attached hereto and made a part hereof as Exhibit "A" is hereby ratified and approved.
2. That the Mayor is hereby authorized to execute the agreement on behalf of the City, and City Staff are directed to take all necessary and reasonable actions to implement this agreement.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Nogales, Arizona this 3rd day of MARCH, 2004.

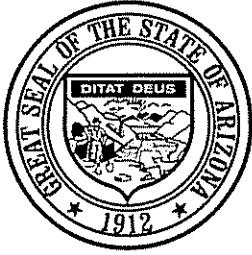

Albert M. Kramer, Mayor

APPROVED AS TO FORM:

ATTEST:


Luis Parra, Interim City Attorney


Leticia Robinson, City Clerk



**ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION

MEMORANDUM**

Jeffrey T. Murray
Assistant Attorney General

Direct: (602) 542-8859
Fax: (602) 542-3646

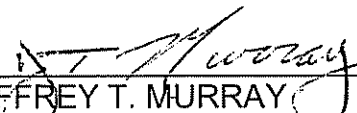
**INTERGOVERNMENTAL AGREEMENT
DETERMINATION**

A.G. Contract No. KR03-1760TRN (**JPA 03-120**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED April 12, 2004.

TERRY GODDARD
Attorney General



JEFFREY T. MURRAY
Assistant Attorney General
Transportation Section